

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOROTHY COVEY,
Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,
Defendants.

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CIVIL NO. 06-CV-3649

MEMORANDUM OPINION & ORDER

RUFE, J.

March 13, 2007

Presently before the Court is Defendants' Motion to Dismiss or For a More Definite Statement [Doc. # 6]. The instant Motion challenges the legal sufficiency of the allegations in Plaintiff's Amended Complaint. For the reasons that follow, Defendants' Motion will be granted in part and denied in part.

I. BRIEF BACKGROUND

In this civil-rights action, Plaintiff alleges that, while serving as a female firefighter for the City of Philadelphia between 1985 and 2005, she was discriminated against and subjected to retaliatory conduct as a result of her gender. She claims that, as a result of the discriminatory treatment, she filed two internal complaints of sexual harassment and/or sex discrimination, as well as a complaint with the Equal Employment Opportunity Commission ("EEOC").¹ On May 12, 2005, Plaintiff was discharged, she claims, because of her gender and in retaliation for her complaints about the discriminatory treatment she was receiving.² On or about May 15, 2005, Plaintiff filed a complaint against Defendant City of Philadelphia with the Pennsylvania Human Relations

¹ Am. Compl. ¶ 13.

² Id. ¶¶ 15, 16.

Commissions (“PHRC”) and the EEOC, claiming gender discrimination, age discrimination, and retaliation.³

On August 16, 2006, Plaintiff filed the instant suit. After Defendant City of Philadelphia challenged Plaintiff’s initial Complaint by way of a motion to dismiss or for a more definite statement, Plaintiff filed an Amended Complaint in which she added claims and named Defendants John McGrath and William Shouldis. In her Amended Complaint, filed on December 21, 2006, she claims that she was treated differently than her male counterparts in the firehouse with respect to disciplinary action, the use of vacation and/or sick time, proper-attire or uniform requirements, and rules or practices regarding possession of a valid driver’s license.⁴ She claims that Defendants’ discriminatory and harassing conduct created a hostile work environment and, ultimately, led to her termination after she complained of the conduct.⁵ She asserts claims against the City of Philadelphia under Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, and 42 U.S.C. § 1983,⁶ and against Defendants McGrath and Shouldis under 42 U.S.C. § 1983 only.⁷

II. DISCUSSION

Defendants challenge Plaintiff’s Amended Complaint on a number of grounds, including: (1) Plaintiff’s failure to state a retaliation claim under Title VII for which relief can be

³ Id. ¶¶ 7, 8.

⁴ Id. ¶¶ 14, 26.

⁵ Id. ¶¶ 13, 16.

⁶ Id. ¶¶ 18–28, Counts I, II, & III.

⁷ Id. ¶¶ 24–28, Count III.

granted; (2) Plaintiff's failure to state cognizable disparate-treatment and retaliation claims under 42 U.S.C. § 1983 because the claims are essentially preempted by Title VII; (3) the redundancy of Plaintiff's claims against McGrath and Shouldis in their official capacities and the claims against the City of Philadelphia; and (4) Plaintiff's failure to state claims against McGrath and Shouldis in their personal capacities because she has not alleged their personal involvement in the violations of federal law or the Constitution. The Court will individually address each of these arguments.

A. Retaliation Claim Under Title VII

First, Defendants argue that Plaintiff has failed to sufficiently plead the specific facts underlying her Title VII retaliation claim. According to Defendants, either the retaliation claim should be dismissed or Plaintiff should be required to file a second amended complaint that contains a more specific statement of the underlying facts.

In order to state a Title VII retaliation claim, a plaintiff must allege that (1) he or she has engaged in a protected activity; (2) the employer took an adverse employment action against her; and (3) there is a causal connection between the protected activity and the adverse employment action.⁸

When reviewing a motion to dismiss under Rule 12(b)(6), the Court must “accept as true all the allegations set forth in the complaint, and . . . draw all reasonable inferences in the plaintiff's favor.”⁹ A Rule 12(b)(6) motion to dismiss should be granted only “if it appears to a certainty that no relief could be granted under any set of facts which could be proved.”¹⁰ The Court

⁸ Moore v. City of Philadelphia, 461 F.3d 331, 340–41 (3d Cir. 2006).

⁹ Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998).

¹⁰ E.g., Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (internal quotations omitted).

is not to “inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims.”¹¹ This standard recognizes that “federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims.”¹²

Under the Federal Rules of Civil Procedure, a complaint need only include “a short and plain statement of the claim showing that the pleader is entitled to relief.”¹³ Because the general notice pleading standard of Rule 8(a) applies in all civil actions other than those specifically excepted by the Federal Rules or statutory law, a heightened pleading standard does not apply to employment-discrimination claims.¹⁴ Accordingly, as the Third Circuit has previously announced, a plaintiff in a civil-rights action is not required to plead specific and detailed facts; rather, a plaintiff need only make out a valid claim upon which relief could be granted.¹⁵ While supporting facts for the claim should be alleged, a plaintiff need only allege those facts “necessary to provide the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests.”¹⁶ “Should more facts be necessary to define the disputed facts and issues, . . . other procedural mechanisms, such as discovery, are available.”¹⁷ Additionally, as Defendants note in their memorandum of law, a motion for a more definite statement is appropriate only “when the pleading is ‘so vague or ambiguous that

¹¹ Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

¹² Evancho v. Fisher, 423 F.3d 347, 352–53 (3d Cir. 2005) (noting that the liberal notice-pleading requirements of the Federal Rules often allow potentially suspect claims to survive Rule 12(b)(6) motions).

¹³ Fed. R. Civ. P. 8(a).

¹⁴ See Thomas v. Independence Twp., 463 F.3d 285, 295 (3d Cir. 2006) (citing Swierkiewicz v. Sorema, 534 U.S. 506, 513 (2002)).

¹⁵ Id.

¹⁶ Id. at 295–96 (internal quotations omitted).

¹⁷ Id. at 295.

the opposing party cannot respond, even with a simple denial, in good faith, without prejudice to [itself].”¹⁸

In this case, neither dismissal nor a more definite statement is required. While Plaintiff’s allegations are not especially detailed, she has sufficiently pleaded a cause of action for retaliation under Title VII. In her Amended Complaint, Plaintiff states that she filed two internal complaints of sexual harassment and/or sex discrimination during her employment, as well as a complaint with the EEOC. She then alleges that she suffered an adverse employment action when she was discharged in May 2005, and that the discharge was in retaliation for her previous opposition to the discriminatory treatment in the firehouse. At this stage, it is inappropriate for the Court to comment on the merit of Plaintiff’s factual allegations or the likelihood of success on the merits. The Court is to determine only whether Plaintiff has sufficiently stated a viable Title VII retaliation claim. Because Plaintiff has alleged participation in a protected activity, an adverse employment action, and causation, the Court finds that she has stated a Title VII cause of action. Moreover, the Complaint is sufficiently pleaded such that Defendant can respond with a simple admission or denial of the alleged retaliatory conduct without prejudicing itself. Accordingly, the Court will not grant Defendants’ motion on this point.

B. Disparate-Treatment and Retaliation Claims Under § 1983

Next, Defendants claim that Plaintiff’s disparate-treatment and retaliation claims should be dismissed inasmuch as they are brought under § 1983 because they may be pursued only under Title VII. While Plaintiff’s brief on this point is convoluted, she appears to argue that her

¹⁸ Hicks v. Arthur, 843 F. Supp. 949, 959 (E.D. Pa. 1994) (quoting 5A Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1376 (1990)).

disparate-treatment claim is cognizable under § 1983 because it is cognizable under Title VII, and that her retaliation claim is cognizable under § 1983 based on her First Amendment right to petition the government for redress of grievances.

In their briefs, neither Defendants nor Plaintiff has accurately articulated the law applicable to these claims. Generally, “if the right which a plaintiff claims was violated is constitutionally based, and also a right protected by Title VII, a plaintiff may bring either a Title VII claim or a Section 1983 claim.”¹⁹ As the Third Circuit has previously held, if an employment-discrimination claim is grounded in the Equal Protection Clause of the Fourteenth Amendment, as well as being actionable under Title VII, the claim can be brought under either Title VII or § 1983, or both.²⁰ This is because the § 1983 claim is based on the violation of a right derived from the Constitution as opposed to a right solely created by Title VII, the violation of which is to be remedied through Title VII’s comprehensive enforcement mechanisms.²¹ Conversely, however, a § 1983 claim based solely on the violation of a right created by Title VII—that is, a right without a constitutional or other statutory basis—is not equally sustainable.²²

In this case, Plaintiff’s claim of disparate treatment under § 1983 is based on a violation of the Fourteenth Amendment and, thus, has a basis independent from Title VII. Consequently, it is not preempted by Title VII and will survive Defendants’ motion to dismiss.

Plaintiff’s retaliation claim under § 1983, however, presents a slightly more difficult

¹⁹ Bair v. City of Atlantic City, 100 F. Supp. 2d 262, 266 (E.D. Pa. 2000).

²⁰ Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1079 (3d Cir. 1990).

²¹ See Middlesex County Sewerage Auth. v. Nat’l Sea Clammers Ass’n, 453 U.S. 1, 20 (1981).

²² See Bair, 100 F. Supp. 2d at 266 (citing and quoting Notari v. Denver Water Dep’t, 971 F.2d 585, 587 (10th Cir. 1992)).

issue. The retaliation claim is not based on a violation of the Equal Protection Clause. At first glance, it appears to be based solely on a violation of Title VII; however, in her response to the motion to dismiss, Plaintiff has argued that her retaliation claim under § 1983 is based on a violation of her First Amendment rights. A plaintiff claiming retaliation under the First Amendment must allege: (1) participation in a “constitutionally protected activity, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action. . . . The key question in determining whether a cognizable First Amendment claim has been stated is whether the alleged retaliatory conduct was sufficient to deter a person of ordinary firmness from exercising his First Amendment rights.”²³ When a plaintiff sufficiently alleges that he or she has been retaliated against for exercising his or her First Amendment rights—specifically the right to free speech and to petition the government for redress of grievances—in accordance with these requirements, the § 1983 claim will survive a motion to dismiss.²⁴

Because Plaintiff’s retaliation claim under § 1983 is based on a violation of her First Amendment rights to free speech and to petition the government for redress of grievances, it has an independent constitutional basis beyond Title VII. It will, therefore, survive Defendants’ motion to dismiss, but only if the Complaint sufficiently alleges a First Amendment retaliation claim.

Construing Plaintiff’s Complaint in the light most favorable to her and considering the “dearth of precedent of sufficient specificity regarding an individual’s First Amendment right to

²³ Thomas, 463 F.3d at 296 (internal quotations and citations omitted).

²⁴ See id.

be free from retaliatory harassment,”²⁵ the Court finds that Plaintiff has sufficiently stated a retaliation claim based on a violation of her First Amendment rights. Her Complaint includes allegations that she participated in constitutionally protected activity by filing internal complaints and an EEOC complaint related to the alleged harassment and/or discrimination. It also includes allegations that she suffered retaliatory action in the form of inordinate discipline and, ultimately, termination as a direct result of reporting the alleged discrimination. Since an ordinary person would be deterred from exercising her First Amendment rights if she knew that such exercise would result in unequal discipline and/or termination, the alleged retaliatory conduct is sufficient to meet the requirements for a retaliation claim under the First Amendment.

Accordingly, the Court will not dismiss Plaintiff’s § 1983 retaliation claim.

C. Official-Capacity § 1983 Claims

Defendants McGrath and Shouldis argue that Plaintiff’s § 1983 claims against them in their official capacities should be dismissed because the claims are redundant; they are essentially suits against the City of Philadelphia, which is already a named Defendant. Plaintiff responds by arguing only that the distinction is not relevant to the viability of her claims.

Since the United States Supreme Court decided Monell v. Department of Social Services of New York,²⁶ municipalities and other local governmental bodies have been subject to suit under § 1983. As several Judges of this Court have previously noted, in accordance with Supreme Court precedent, public officials in their official capacity are legally indistinct from the

²⁵ Id. at 296 n.4 (quotation omitted).

²⁶ 436 U.S. 658 (1978).

municipality for which they serve.²⁷ As a result, claims against individual governmental officials in their official capacity have been ruled redundant and unnecessary where the same claims are made against the entity that those officials serve.²⁸ A court is not required to dismiss redundant claims, but may choose to do so at its discretion.²⁹

Here, Plaintiff has named the individual Defendants, McGrath and Shouldis, without specifying whether they are being named in their official or individual capacities. The Court must therefore assume that she is naming them in both capacities. Plaintiff has also named the City of Philadelphia—the entity that the individual Defendants serve—as a Defendant. Essentially then, Plaintiff has named the City of Philadelphia three times in each § 1983 claim. Accordingly, inasmuch as the suits are brought against McGrath and Shouldis in their official capacities, they are redundant and unnecessary. The Court therefore chooses to exercise its discretion to dismiss the claims against McGrath and Shouldis in their official capacity. The claims against McGrath and Shouldis in their personal capacities, however, are unaffected by this ruling, and are independently considered below.

D. Personal-Capacity § 1983 Claims

Finally, Defendants McGrath and Shouldis argue that the claims against them in their personal capacities should be dismissed because Plaintiff has failed to adequately allege their personal involvement in any constitutional or federal-law violations that may have occurred.

²⁷ See, e.g., Satterfield v. Borough of Schuylkill Haven, 12 F. Supp. 2d 423, 432 (E.D. Pa. 1998); Kenny v. Whitpain Twp., No. 96-CV-3527, 1996 WL 445352, *2–3 (E.D. Pa. Aug. 6, 1996); see also Brandon v. Holt, 469 U.S. 464, 471–73 (1985).

²⁸ See Kentucky v. Graham, 473 U.S. 159, 169 n.14 (1985); Satterfield, 12 F. Supp. 2d at 432.

²⁹ Satterfield, 12 F. Supp. 2d at 432.

The plaintiff in a civil-rights action under § 1983 must allege that individual defendants had “personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior.”³⁰ Personal involvement includes: (1) participating in the alleged violation; (2) directing another to commit the alleged violation; or (3) knowledge of and acquiescence in the alleged violation.³¹ There is not a heightened pleading requirement for pleading § 1983 claims against individual defendants.³²

Considering these pleading requirements, the Court concludes that Plaintiff has sufficiently pleaded her claims against McGrath and Shouldis to survive Defendants’ Rule 12(b) motion. Plaintiff’s Complaint, while lacking the detailed allegations that Defendants may desire, contains adequate allegations that the individual Defendants were personally involved in perpetrating the alleged wrongs. In her Complaint, Plaintiff alleges that McGrath and Shouldis “took disciplinary actions, up to and including the termination of Plaintiff, which were motivated by Plaintiff’s gender and/or done in retaliation for Plaintiff’s complaints of gender discrimination.”³³ Her claims against McGrath and Shouldis are not based solely on *respondeat superior*—that is, she is not naming them as Defendants only because they were supervisors and were responsible for the conduct of other employees. Plaintiff sufficiently alleges personal involvement by stating that the individual Defendants participated in the alleged violations when disciplining and, ultimately, terminating her. Accordingly, the Court will not dismiss Plaintiff’s claims against Defendants McGrath and Shouldis

³⁰ Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (citing Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976)).

³¹ Baker v. Monroe Twp., 50 F.3d 1186, 1190–91 (3d Cir. 1995).

³² See Thomas, 463 F.3d at 294–95.

³³ Am. Compl. ¶ 25.

in their personal capacities.

III. CONCLUSION

While Plaintiff's Amended Complaint is lean on factual allegations supporting its claims, it is sufficient to survive Defendants' Motion to Dismiss or for a More Definite Statement in most regards. The Court concludes that the only claims in the Amended Complaint that should be dismissed are those against Defendants McGrath and Shouldis in their official capacities, since they are essentially suits against the City of Philadelphia and the City is already named as a Defendant in each of the claims. Otherwise, the remainder of Plaintiff's claims survive, and Defendants will be required to answer her allegations in accordance with the Federal Rules of Civil Procedure.

An appropriate Order follows.

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CIVIL NO. 06-CV-3649

ORDER

AND NOW, this 13th day of March 2007, upon consideration of Plaintiff's Amended Complaint [Doc. # 4], Defendants' Second Motion to Dismiss or for a More Definite Statement [Doc. # 6], and Plaintiff's Response in opposition thereto [Doc. # 8], and after review of the applicable legal authorities, the Court rules on the Motion in the following manner:

- (1) It is hereby **ORDERED** that Defendants' motion to dismiss Plaintiff's Title VII retaliation claims or, in the alternative, for a more definite statement of the claims, is **DENIED**.
- (2) It is **FURTHER ORDERED** that Defendants' motion to dismiss Plaintiff's 42 U.S.C. § 1983 claims for disparate treatment and retaliation is **DENIED**.
- (3) It is **FURTHER ORDERED** that Defendants' motion to dismiss Plaintiff's 42 U.S.C. § 1983 claims against Defendants McGrath and Shouldis in their official capacities is **GRANTED**.
- (4) It is **FURTHER ORDERED** that Defendants' motion to dismiss Plaintiff's 42 U.S.C. § 1983 claims against Defendants McGrath and Shouldis in their personal capacities is **DENIED**.

It is **FURTHER ORDERED** that Defendants shall **FILE** an Answer to the Amended Complaint in accordance with Federal Rule of Civil Procedure 12(a)(4)(A).

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.